INDEX.

TABLE OF CASES.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 394

THE TRUST COMPANY OF CHICAGO, Administrator of Estate of Elizabeth Palmer Smith, deceased and JASON PAIGE, as Executor of Estate of Carrie E. Paige, deceased, and others,

Petitioners,

vs.

CITY OF CHICAGO, and others,

Respondents.

Petition for writ of certiorari to Appellate Court of Illinois, First District. There heard on Appeal from Circuit Court of Cook County to Supreme Court of Illinois, to November Term, 1942 and transferred.

Honorable John Prystalski, Chancellor.

Mandamus and Class Suit in Equity to administer a Trust.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

MAY IT PLEASE THE COURT:

The respondents, City of Chicago, *et al.*, oppose the petition for certiorari on the following grounds:

I.

IN ESSENCE THE PETITION FOR CERTIORARI CHARGES THAT THE JUDGMENTS OF THE STATE COURTS ARE ERRONEOUS. THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION OFFERS NO PROTECTION AGAINST ERRONEOUS JUDICIAL ACTION EVEN IF THE CHARGES WERE WELL GROUNDED.

The petition for certiorari is rather difficult to follow but a careful analysis of it discloses that essentially it charges that: (1) The trial court erred in dismissing the case summarily upon a motion to dismiss the complaint because it was not filed within five years from the date when the cause of action accrued; (2) The Supreme Court of Illinois erred in refusing to consider the case upon direct appeal to it from the trial court, but transferred it to the Appellate Court of Illinois; (3) The Appellate Court erred in sustaining the judgment of the trial court; (4) The Appellate Court erred in refusing to find that petitioners had been deprived of rights guaranteed by the Illinois Constitution; (5) The Supreme Court of Illinois erred in refusing to grant an appeal from the Appellate Court.

In short, the petitioners are complaining, not want of due process but of alleged erroneous decisions of the State courts in course of the usual judicial process. The Federal Constitution offers no guarantee of correct decisions.

Ballard v. *Hunter*, 204 U. S. 241, 258;
Chicago L. Ins. Co. v. *Cherry*, 244 U. S. 30.

Petitioners were given their day in court. They filed their complaint through counsel and were given full opportunity to resist the defendants' motion to dismiss the complaint. The trial court took the view that the undisputed allegations in the complaint disclosed that it was not filed within the time required by statutory limitations. Dismissal for such reason is a time honored procedure and no case can be found questioning the fact that it is due process. From a constitutional point of view it is immaterial whether the decision of the trial court is correct or erroneous.

It is also well settled that appeals are not essential to due process.

McKane v. *Durston*, 153 U. S. 684, 687.

Even a statute which declares that writs of error in criminal cases punishable with death to be writs of grace and not writs of right does not violate the Federal Constitution.

Andrews v. *Swartz*, 156 U. S. 272.

Accordingly the decision of the Illinois Supreme Court upon the attempted direct appeal that there was no debatable constitutional question involved warranting its assumption of jurisdiction does not draw in question any right under the Fourteenth Amendment.

Thorington v. *Montgomery*, 147 U. S. 490, 494.

In the Appellate Court of Illinois the petitioners were given a full hearing upon printed briefs filed by them and were given a written opinion assigning reasons for the decision of the court. Pursuant to statute petitioners filed their petition for leave to appeal to the Supreme Court of Illinois but failed to convince the latter court that the Appellate Court had erred.

Petitioners complain that the opinion of the Appellate Court was brusque. There was no need for a lengthy opinion. The real issue in the case had been repeatedly determined by the Illinois courts in *Blakeslee's Warehouses* v. *City of Chicago,* 369 Ill. 480; *Cohen* v. *City of Chicago,* 377 Ill. 221; and *Chapralis* v. *City of Chicago,* 326 Ill. App. 554. It is not surprising that the Illinois courts refused to consider seriously the fantastic theory which petitioners evolved in an attempt to circumvent the well settled rule laid down in the three last cited cases that suit must be brought to recover interest within five years after the principal of a judgment has been paid in full.

The petitioners have had full and fair hearings in the State courts and the judgments therein have been in conformity with reason and settled law. The petition for certiorari should be denied.

Respectfully submitted,

BARNET HODES,
Corporation Counsel of the
City of Chicago,

Attorney for Respondents.

J. HERZL SEGAL,
Head of Appeals and Review Division,
Assistant Corporation Counsel,

Of Counsel.